

EXPERIMENTS IN GOVERNING CANADA.

 BY D. A. O'SULLIVAN, D. C. L.

The Canadian Union now in its twenty-first year is, so far as the Old Province of Canada is concerned, the latest of several experiments, for its good government. That Province was a divided Province for fifty years, and subsequently it was a united one for a little over half that period. With some variations in geography, it was the Old Province of Quebec; and within thirty years Quebec existed under what may be considered three forms of government.

The change in 1867 was accordingly the sixth change since the conquest or cession, and since the war commonly called in history the Seven Years War,—the treaty that terminated that war decided the fate of Canada.

Speaking of the fall of Quebec in 1759, and the capitulation of Montreal in the following year, I think the word conquest a perfectly proper one, and if there had been no treaty of union as there has been, Canada would have remained a conquered rather than a ceded portion of the British Empire. I entirely incline to the view that it is a ceded colony.

The period between the capitulation and the treaty covers less than three years. This was the period of martial law—the reign of the soldiery. It was of that uncertain character which is to be expected when the ultimate destiny of the country was in suspense—it was in fact an occupation by the English under the government of the drum-head. The English colonists were not satisfied and the French could not be expected to be satisfied.

* * * * *

I do not think that the capitulations of Quebec and Montreal survived after 1763, except in so far as they can be read with the Treaty of that year, and whatever parts of the Treaty are inconsistent with these interim stipulations are superseded by it.

This period ought not strictly to be classed with our experiments in the government of Canada, but Canada was in some wise governed in that time though the subjects or citizens had no voice in the administration.

The Treaty of cession was, after long deliberation, signed in February, 1763. It was an international document signed by the representatives of England, France and Spain, and the signature of a representative from Portugal also testified to the concurrence of his country.

The Treaty provided for no domestic matters except freedom of religion to the new subjects of the British King, and so the municipal government of Canada must be looked for in some other document. The Treaty was the deed of conveyance just as the Treaty of 1803, conveying Louisiana to the United States, or the Treaty of 1819, disposing of Florida.

* * * * *

The Proclamation of 1763, is an important document historically, but before referring to it a glance at the map will assist very materially in estimating the geographical position of affairs.

In 1763, the old thirteen Colonies were still British—they extended eastward of the Mississippi to the seaboard, and from Acadia in the north to Florida in the south. New France whatever its western limits may have been is very generally associated with the name Canada. The Mississippi was taken to be the boundary after 1763 between France and England; and so, when Canada with all its dependencies was ceded to England, it embraced roughly whatever lay to the east of that river and north of what were then and afterwards British Colonies. By a subsequent clause in the Treaty of 1763, Spain ceded Florida to England, and the latter found herself with two strips of the continent to be dealt with in the Proclamation of government. This territory was divided into four parts of which this country was one; and the only portion of the Proclamation pertinent to our subject is this that “as soon as the state and circumstances of the said colonies will admit thereof, the governors will “summon and call general assemblies, with power to make laws for “the public peace, welfare and good government of the inhabitants “as near as may be agreeable to the laws of England. In the mean-

“time all colonists could confide in the royal protection for the enjoyment of the benefits of the laws of the realm of England.”

This Proclamation with the care of Canada was entrusted to Sir Guy Carleton, and Canada was, during eleven years, governed much as it had been in the preceding three years. It was government very like what obtained in the North-West Territories before any representation was accorded to them. It is needless to say that the inhabitants, after waiting until their patience was exhausted, complained and then petitioned for relief from the intolerable state of things. The information that reached London was of two very different complexions.

There was on the one hand a demand that the British laws and institutions should be declared to be in force in the country. This though coming from a minority trifling in point of numbers was still put forward with great energy and with many advantages on its side.

On the other hand the ancient inhabitants required a continuance of the laws and institutions under which they had flourished for over a century. They numbered 70,000, as against less than 500, of the recent additions to the Province. The ministry in England then passed an Act of government favorable to the ancient subjects, but unfortunately obnoxious to the minority. This was the Quebec Act—a very important charter of government.

The Quebec Act was passed to define the boundaries of the newly acquired territory, and to put beyond doubt the character of the laws in force as well as to determine certain domestic matters within the Treaty of cession. It must be concluded now that it was no easy matter to establish laws that would suit the old and new subjects of the King.

There was one Englishman to every two hundred Frenchmen. The view taken by the English statesmen favored the re-introduction of the old French law in civil matters, leaving the criminal law of England the rule in such cases. The boundaries of the Province were then enlarged as appears by the map, and it would seem that the English had in view the taking in of a French settlement near the junction of the Ohio and the Mississippi. The Old

Province of Quebec included not only the present Province of that name, but also the present Province of Ontario and part of four, five or six States of the American Union. The Quebec Act did not grant a legislative assembly to the people, but an advising council only. This body passed ordinances under which the people were governed for sixteen years, until the next change took place. The extended territory of Quebec did not last so long, for within a little over a year the Thirteen Colonies declared themselves independent, and by the Treaty of 1782, the territory south and east of Lake Erie and Michigan was severed from Quebec. In the census taken by Sir Guy Carleton in 1784, the population was put down at 113,032—subsequently considerable accessions had been made to the numbers of English settlers, so that when a new change of government was granted in 1791, the numbers stood not quite three Frenchmen to one Englishman.

Under this change of what is called the constitutional Act, the two classes of Colonists were still opposed to each other and the result was that the English settlers were very nearly as much disappointed as they were in 1774. They wanted a repeal of the Act—a new constitution for the whole territory. The Quebec Act was not repealed—the Province was divided leaving to the inhabitants of each division the power over their own laws. The Upper Province at once adopted the English laws. In matters of civil proceedings—the boundary at least for part of the way was established between Eastern and Western Canada, and the divided Canadas set out in their separate destinies. For fifty years they existed in this way—the largest period in our history under possibly the most unsuitable form of government. There were two houses for legislative purposes, and an executive Council with a Governor of large independent powers. The Constitutional Act was a misnomer, and after the first one-third of its existence the Provinces were dissatisfied and finally became rebellious.

The agreement of the people with the ruling powers was not an effective instrument until the Provinces were again united in 1841. The powers of the Governors were to be exercised through responsible ministers, and a form of government prevailed for a quarter of a century not very materially different—except as to division of legislative

powers—from what prevails now, with one Parliament—if we may call it such—legislative on all subjects competent to a Colony—for the peace, order, and good government of Canada. A slight change was made in the constitution of the Upper Chamber in 1856, and shortly afterwards the united Canadas cast about them for partners in the formation of a new Dominion. The Union of 1867 was the result, the last of the experiments in governments.

Before discussing this latest form of government, it is well to recollect that the English Government in every instance since the cession, aimed at granting such a form of government as the majority desired. The changes since have been changes of necessity. The Quebec Act was intended to provide for a colony almost entirely composed of one race and one religion, settled in one part of Canada, between Montreal and Quebec. The constitutional Act of 1791 had to deal with an important piece of territory west of Montreal, and for the most part of another race and another religion. Mr. Pitt's Government accordingly divided the original territory, leaving each section to manage its own affairs. One portion retained the French laws under the Quebec Act, the others introduced the laws of England. Had there been any fair grant of representative institutions, this might have subsisted to this day. Indeed it is claimed that now there is somewhat of a return to this ancient form of government. In 1841, when the discontent was too obvious to be overlooked, it was discovered that a change was necessary. The remedy was not so much in a union of the two Provinces as in the right to responsible government. Still a union was not so unlikely, when it was discovered that the two races were all but evenly balanced. A united Canada after the experience of two rebellions was fancied more stable and likely to be respected, than a divided Canada.

It is to be borne in mind, however, that the variations in the forms of government have been due largely to the fact that while the French population increased with the normal rapidity of a people receiving no additions from abroad, the English speaking inhabitants increased from 500 at the cession to 100,000 at the Act of 1791, and half a million at the Act of Union, fifty years later. These circumstances are sometimes overlooked by those who complain of every state of affairs before a change is made in the constitution, and complain equally after each has been made.

In 1867, there was a certain reversion to the Act of 1791, so far as the Canadas are concerned. There was to be a Legislature, one in Toronto and one at Quebec, and though there are such, but with considerably curtailed powers they are with such powers, as Ontario and Quebec desired to have. The praise or blame of confederation, the excellences or defects of the British North America Act of 1867, are to be laid at the charge of these two Provinces. If New Brunswick came in unwillingly, or if Prince Edward Island refused to come in after agreeing to do so, the other Provinces carried the Imperial Act; and it is not too much to say that if the Act does not follow the agreement of the Provinces signed in Quebec in 1864, the Canadas thought it best to have an Act carried in the best way they could. Looking at this latest charter of government, it is of course a very great departure from any of the charters that preceded it in Canada. A federated monarchy, or a monarchical federation was, except in the United States, a thing unknown to the English speaking people. There was a division in their powers of governing: one set of officers and machinery to do part of the legislative and executive work, and another set and other machinery to do the other part, leaving it forever a vexed question as to the exact boundary line between their powers, and their duties. The government of the new Canada was let out so to speak on shares, one Legislature to do the home work for each member of the Union, and the other to do the general government for all the members.

The Quebec resolutions set out with considerable diffuseness the different classes of legislative control, but the Act of Union did not exactly sanction that allotment. That may or may not be now a cause for amending the Act—it does not seem to me there is any substantial departure, or if there is that it has worked any great injustice.

To keep the different legislatures within their own limits was of course a very delicate matter to adjust. In the Belgian Union there is no constitutional check, in the United States there is the Supreme Court—all the courts in fact—with us there is as well the veto of the central government. This has become almost a party question, so that it is difficult to say anything of it without seeming to depart from the pure political aspect of the question. I do not hesitate to say that as a veto must come from some quarter, I prefer to have it come from

our own representatives. The members at Ottawa who exercise the power of vetoing provincial legislation, are themselves elected to office by the men of the Provinces, and though they cannot directly be called to account, an attack upon any one Province is an attack upon all. To that general reason I would assign another perhaps as forcible, and that is that the line of demarcation between the powers of central and local governments ought to be better known to the men of Canada than to the ministers of the Crown in Great Britain. That may be some reason for handing over this power to Judges of the Supreme Court, but whatever may be the defects of the judgment of the Cabinet it has the advantage of coming to the public as the decision of one person. The Supreme Court as every other Court gives the individual opinion of each member, and if a Provincial Act were to be upheld because three Judges were in favor of it while three were against it, that would not diminish the dissatisfaction. The Act of Union is largely taken up with Ontario and Quebec—indeed nearly one-half is devoted to these Provinces. The other two came in with their legislatures unimpaired, and the executive power altered only so far as thereafter the Lieutenant Governor was sent from Ottawa and not from England. The carelessness to provide for the Canadas gives rise to the suspicion that those who piloted the Act in 1867, were doubtful if the simple provisions given to New Brunswick and Nova Scotia would suffice for the other provinces. With the United States constitution as a model worthy of being followed, it is rather remarkable that it was altogether departed from in this respect. The United States constitution guarantees a republican form of government to each of the States, and there practically the matter rests.
